

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IVAN MAURICE JONES,

Defendant-Appellant.

UNPUBLISHED

September 19, 2000

No. 218641

Saginaw Circuit Court

LC No. 98-016219 FC

Before: Talbot, P.J., and Hood and Gage, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. The trial court sentenced defendant to forty months' to twenty years' imprisonment. Defendant appeals as of right. We affirm.

Defendant contends that he was denied the effective assistance of counsel. To establish ineffective assistance of counsel, a defendant must demonstrate that trial counsel's performance was objectively unreasonable and that the defendant was prejudiced by counsel's defective performance. *People v Mitchell*, 454 Mich 145, 164; 560 NW2d 600 (1997). To establish prejudice, a defendant must show a reasonable probability that but for counsel's error the result of the proceedings would have been different, and that the result of the proceedings was fundamentally unfair or unreliable. *People v Poole*, 218 Mich App 702, 718; 555 NW2d 485 (1996). A defendant must overcome the presumption that the challenged action or inaction was sound trial strategy. *People v Johnson*, 451 Mich 115, 124; 545 NW2d 637 (1996).

Defendant first asserts that defense counsel's heavy case load prevented him from meeting with defendant before trial and from adequately preparing a defense. Defense counsel testified at the *Ginther*¹ hearing that he fully prepared a defense and that although no written records documented his meetings with defendant, he did meet with defendant before trial to discuss the defense. Moreover, because defendant never offered any alleged connection between a specific inadequacy in defense

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

counsel's preparation for trial and some resulting prejudice to defendant, we find defendant's allegations of unpreparedness insufficient to establish ineffective assistance of counsel. *Poole, supra*.

Defendant next claims that counsel failed to call a witness who argued with the victim earlier in the day of the assault, and insufficiently questioned the victim concerning her level of intoxication at the time of the assault. The record shows that the victim acknowledged drinking alcohol on the day of the assault and that defense counsel's cross examination of the victim included the inquiry to what extent her consumption of alcohol affected her memory of the assault. With respect to the suggested defense witness, known only as Simone, she allegedly fought with the victim earlier on the day defendant assaulted the victim. We will not second guess defense counsel's strategic determinations that he adequately cross examined the victim and that Simone could not provide defendant a substantial defense. *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999); *People v Hyland*, 212 Mich App 701, 710; 538 NW2d 465 (1995), modified on other grounds 453 Mich 902; 554 NW2d 899 (1996).

Lastly, defendant argues that defense counsel's closing argument, during which defense counsel acknowledged defendant's possession of a knife on the evening of the assault, did not reflect defendant's position that the victim possessed the knife during the assault. During closing argument, defense counsel conceded defendant's guilt of an aggravated assault, on the basis that defendant hit the victim with his fists. In an effort to avoid an assault with intent to murder conviction, defense counsel attempted to minimize the victim's trial testimony that during the same evening defendant possessed a knife, specifically emphasizing that defendant never inflicted any injury with the knife. We also decline to second guess this strategic decision. *People v Emerson (After Remand)*, 203 Mich App 345, 349; 512 NW2d 3 (1994) (denying to second guess counsel's trial tactic of admitting guilt of a lesser offense); *People v Schultz*, 85 Mich App 527, 532; 271 NW2d 305 (1978) (noting that while defense counsel may not unequivocally concede his client's guilt of the highest crime charged, counsel may well admit guilt of a lesser included offense in hopes that due to his candor the jury will convict of the lesser offense instead of the greater).

We therefore conclude that nothing in the record of the trial or the *Ginther* hearing shows that defense counsel's performance was unreasonable or that defendant was denied a fair trial.

Affirmed.

/s/ Michael J. Talbot

/s/ Harold Hood

/s/ Hilda R. Gage